up his place, and no Premier even dreams of disappointing these expectations." (at p. 444)

"But the sanction which constrains the boldest political adventurer to obey the fundamental principles of the constitution and the conventions in which these principles are expressed, is the fact that the breach of these principles and of these conventions will almost immediately bring the offender into conflict with the courts and the law of the land." (at p. 445)

"....the one essential principle of the constitution is obedience by all persons to the deliberately expressed will of the House of Commons in the first instance, and ultimately to the will of the nation as expressed through Parliament." (at p. 456)

"Of course, therefore, a Minister or a Ministry must resign if the House passes a vote of want of confidence." (at p. 457)

Dicey is speaking of the British Constitution, but the same principles apply *mutatis mutandis* to the Constitution of Sarawak. The constitutional way out both for a British Prime Minister and for a Sarawak Chief Minister is not by dismissal but by resignation. We need not speculate on what would happen if occasion arose for a resignation, and a Chief Minister refused to resign. In the instant case, the Chief Minister has not refused to resign, and there is no power to dismiss him. He has already indicated through his counsel that he was prepared to consider a dissolution and presently an election. That political solution may well be the only way to avoid a multiplicity of legal complications. Possibly all parties, and the people of this nation, in whom sovereignty is supposed to lie, will wish the same solution.

"In some political situations a judicial duty to rule upon the legal merits of the case may have to be accepted as an inescapable obligation....In an atmosphere highly charged with political tension the task of the judges may be acutely embarrassing, especially if they are called upon to decide between two claimants to legitimate political power, of whom one commands the effective means of imposing his will and the other is able to marshal equally or more persuasive legal arguments."

("The New Commonwealth and its Constitutions": S. A. de Smith, p. 87)

Embarrassing as it may be, my task is simply to interpret the written word of the Constitution. On such interpretation the case presented in the statement of claim is unchallengeable. There will be judgment for the plaintiff as prayed.

Judgment for the plaintiff.

SUNNY ANG v. PUBLIC PROSECUTOR

[F.C. (Tan Ah Tah Ag.C.J., Chua and Winslow JJ.) November 19, 1965]

[Singapore — Federal Court Criminal Appeal No. 26 of 1965]

Penal Code, s. 302 — Murder — Circumstantial Evidence — Cumulative effect — Body of deceased not found — Allegation that trial judge was biased and prejudiced against accused — Criminal Procedure Code (Cap. 132), s. 192(3).

Criminal Law and Procedure — Trial — Witness for the prosecution — Person who had not given evidence at preliminary inquiry — Calling of — Notice to be given — Criminal Procedure Code (Cap. 132), s. 192(3).

Evidence — Circumstantial — Cumulative effect.

The appellant in this case was convicted for the murder of one Jenny Cheok Cheng Kid and was sentenced to death. According to the prosecution the offence was committed at sea near two islands off Singapore. The appellant had hired a sampan from a boatman and on his directions the boatman brought the appellant and the girl to a place near the two islands where he dropped anchor. According to the appellant his object in going there was to collect corals; the prosecution contended that his real intention was to murder the girl, and that in pursuance of that intention he assisted her to put on the diving equipment and allowed her, a novice diver, to go down alone, wearing a flipper, which had been previously cut, in waters which he knew were dangerous and hazardous, with the result that she met her death. Evidence was given that the girl had been insured against accidents with several insurance companies; and that some of the policies had been renewed by the appellant on the morning of the girl's death, although he had not renewed or extended his own insurance policy. The prosecution relied on circumstantial evidence and on the cumulative effect of such evidence. On appeal a number of grounds were relied on and it was alleged *inter alia* (1) that the learned trial judge had erred in law in failing to direct the jury on a possible verdict of culpable homicide not amounting to murder; (2) that the learned trial judge erred in law in permitting the prosecution to abuse the provisions of section 192(3) of the Criminal Procedure Code by adducing the evidence of witnesses who had not been called at the preliminary inquiry after giving only a few minutes' notice of the intention to call such witnesses; (3) that the learned trial judge erred in law in permitting the prosecution to adduce evidence of attempts to suborn the boatman; (4) that the learned trial judge was prejudiced and biased against the appellant; (5) that the learned trial judge erred in law in failing adequately to direct the jury on the danger of convicting an accused person upon circumstantial evidence.

Held: (1) having regard to the facts and circumstances in this case, the case was one in which the appellant was either guilty of murder or not guilty of any offence whatsoever and it was unnecessary for the trial judge to direct the jury on a possible verdict of culpable homicide not amounting to murder;

(2) as no time limit is prescribed by section 192(3) of the Criminal Procedure Code the prosecution had technically complied with the provisions of the section and were at liberty to call the witnesses but as a matter of practice every effort should be made by the prosecution to serve the necessary notice and documents as soon as possible after it is known that a person who has not given evidence at a preliminary inquiry has to be called as a witness for the prosecution;

(3) the evidence of subornation of the witness was not objected to at the trial by counsel for the appellant, who had in fact wanted the evidence in, and therefore the appellant could not complain against the admission of the evidence;

(4) while it was true that the learned trial judge expressed himself with great emphasis and in strong terms on various matters, the jury were left in no doubt that they were the sole judges of the facts in the case and there was no substance in the grounds that the judge was biased and prejudiced against the appellant;

(5) the directions of the learned trial judge on the

effect and in particular the cumulative effect of circumstantial evidence were perfectly adequate;

(6) although the body of the deceased has never been found, there was overwhelming evidence on the record that the appellant murdered her.

[Editorial Note: The appellant sought special leave to appeal against his conviction to the Judicial Committee of the Privy Council. The Judicial Committee refused leave on October 4, 1966.]

FEDERAL COURT.

P. Coomaraswamy (*Kirpal Singh* with him) for the appellant.

Francis T. Seow, Senior State Counsel (*K. S. Rajah* with him) for the respondent.

Cur. Adv. Vult.

Tan Ah Tah Ag.C.J.: The appellant was convicted on the 18th May 1965 of the murder of one Jenny Cheok Cheng Kid (hereinafter referred to as Jenny) and was sentenced to death. He now appeals against that conviction.

According to the prosecution the offence was committed on the 27th August 1963 at about 5 p.m. at sea near two islands called Pulau Dua which are also known as the Sisters Islands. The appellant had hired a sampan from a boatman called Yusof and on his directions Yusof had taken both the appellant and Jenny to a place between the two islands where he dropped anchor. The appellant stated in evidence that his object in going there was to collect corals and that Jenny was to assist him in doing so. According to the prosecution this was only the ostensible reason for going there; the appellant's real intention was to murder Jenny and in pursuance of that intention he assisted Jenny to put on the diving equipment which had been brought in the sampan and allowed her, a novice diver, to go down alone, wearing a flipper which had previously been cut, into waters which he knew were dangerous and hazardous with the result that she met her death.

The evidence relied upon by the prosecution was wholly circumstantial. For that reason it is relevant to set out the more important facts and circumstances which the jury were in a position to find, if they decided to do so, from the evidence. These facts and circumstances were as follows:—

(1) The appellant had been made a bankrupt in October 1962 and was still a bankrupt on the 27th August 1963, being the day on which the offence was alleged to have been committed. He was in need of money and that could be a motive for the crime.

(2) On the 27th August 1963 Jenny was insured against accidents with several insurance companies, the total sum being $450,000.

(3) One of the insurance policies under which Jenny was insured for the sum of $150,000 had lapsed on the 26th August 1963 but was renewed by the appellant on the morning of the 27th August 1963 for another five days. The appellant, however, did not renew or extend his own insurance policy which had been taken out at the same time.

(4) Another one of these insurance policies, which was for the sum of $100,000, was due to expire on the 28th August 1963.

(5) The beneficiary named in some of the policies was the appellant's mother. In the case of the other policies the benefit was to go to Jenny's estate.

(6) Jenny, who was 22 years of age and was a bar waitress earning $90 per month and about $10 in tips per day when she worked, made a will on the 7th August 1963 in which the appellant's mother was named as the sole beneficiary. The appellant accompanied Jenny to the solicitor's office when instructions for the preparation of the will were given to the solicitor.

(7) Jenny had only a little experience of what is called scuba diving and might fairly be described as a novice scuba diver. This was known to the appellant, although he claimed that she had made good progress under his tuition.

(8) On the 27th August 1963 the appellant allowed Jenny to go down into the waters near Pulau Dua alone. According to an expert witness, it was not safe for a novice to scuba dive alone.

(9) The waters near Pulau Dua were dangerous and hazardous. The appellant had dived in these waters on previous occasions and was in a position to know this.

(10) The appellant did not go down into the water himself even after Jenny had failed to come to the surface.

(11) Jenny did not wear gloves when she went down into the water. This could be inferred, if the jury decided to do so, from the fact that the two pairs of gloves which had been brought by the appellant on that occasion were still in his swimming-bag. Gloves were usually worn when looking for corals in order to prevent the hands and fingers from being cut. It was of course for the jury to decide whether the gloves produced in court were the very same gloves which were in the appellant's swimming-bag on the 27th August 1963. The jury were in a position to observe that the appellant was unable to explain why there should be two pairs of gloves in the swimming-bag after Jenny had disappeared. It

was open to the jury to reach the conclusion that the appellant did not really intend to look for corals that day.

(12) One of the flippers worn by Jenny that day was found on the 3rd September 1963 at a depth of about 45 feet not very far from the place where she had gone into the water. The heel strap was severed and on examination it was found that the strap had been cut in two places by a knife or sharp instrument. There was no direct evidence to show who had cut the strap but it was open to the jury, if they decided to do so, to find that it was the appellant who had cut it. It was stated by an expert witness that if a diver suddenly loses one of his flippers whilst scuba diving, his equilibrium would be upset, his mobility impaired and it might well lead to panic in the case of an inexperienced diver.

(13) The conduct of the appellant after the disappearance of Jenny was described by Yusof and other witnesses. It was open to the jury to find that there was a lack of urgency in the conduct of the appellant at the relevant time.

(14) Less than 24 hours after the disappearance of Jenny, the appellant made formal claims on the three insurance companies which had issued policies covering her against accidents.

It is convenient at this stage to refer to the submission made on behalf of the appellant that the learned trial judge erred in law in failing to direct the jury on a possible verdict of culpable homicide not amounting to murder. Having regard to the facts and circumstances which it was open to the jury to find, we are of opinion that in this particular case, it was not necessary to give that direction to the jury. The case was one in which the appellant was either guilty of murder or not guilty of any offence whatsoever.

Counsel for the appellant contended that the learned trial judge erred in law in permitting the prosecution to abuse the provisions of section 192(3) of the Criminal Procedure Code by adducing the evidence of witnesses who had not been called at the preliminary enquiry after giving only a few minutes' notice of the intention to call such witnesses. It is to be observed that no time limit is prescribed by section 192(3). There was therefore a technical compliance with the provisions of section 192(3) and the prosecution were at liberty to call these witnesses. In so deciding, however, we would express the view that every effort should be made by the prosecution to serve the necessary notices and documents as soon as possible after it is known that a person who has not given evidence at a preliminary enquiry has to be called as a witness for the prosecution. If this is not done it may become necessary to suggest an amendment of the provisions of section 192(3).

It was contended by counsel for the appellant that the learned trial judge erred in law in permitting the prosecution to adduce evidence of attempts to suborn the witness Yusof. On this point it is important to observe that no objection was raised by counsel for the appellant at the trial when Yusof was being questioned by counsel for the prosecution as to his conversations with the appellant's brother Richard Ang and the appellant's mother. It can be inferred from the evidence that Richard Ang and the appellant's mother approached Yusof because counsel for the appellant wished to take a statement from him. Indeed, counsel for the appellant stated during the trial that he had been informed of an attempt to interfere with Yusof and he therefore thought that one way to ensure things, as he put it, was to have a statement recorded from Yusof. In fact Yusof called at his office and made a statement to counsel for the appellant in the presence of another advocate and solicitor. At one stage of the trial counsel for the appellant stated that he certainly wanted the evidence in. He was concerned to explain what he had done and why he had acted as he did. In our view, he should not now complain that the evidence was admitted.

It is relevant to observe that Yusof stated that none of the three persons concerned, that is to say, Richard Ang, the appellant's mother and counsel for the appellant asked him at any time to change his story.

Another ground of appeal put forward by counsel for the appellant was that the learned trial judge cast unnecessary and unwarranted aspersions on his conduct with the result that the appellant's case was prejudiced. In considering this matter it should be noted that during the trial itself and while the question of counsel's conduct was being discussed, the learned trial judge, who no doubt had already expressed himself in strong terms on the point, stated more than once that he accepted counsel's explanation. He also promised to deal with the matter in the summing-up. This promise was kept, as can be seen from the following passage in the summing-up:—

> "Now, there are one or two matters that I want to clear up right away. The first is in fulfilment of a promise I made to Mr. Coomaraswamy during the trial. You will recollect the incident — that I queried the propriety and the wisdom of his interviewing the key witness for the prosecution, the boatman, after the accused had been charged with this offence.
>
> Now, as you have heard me say, I accepted Mr. Coomaraswamy's explanation, in that, according to his lights at any rate, he did what he thought was proper in the interests of his client. So that as far as that incident is concerned you will dismiss it completely from your minds.

You will remember the boatman's evidence that, he said, he never changed his story, nor did anyone ever ask him to do so. And so with that comment, gentlemen of the jury, you will dismiss that incident from your mind entirely."

In our opinion, having regard to the passage which has just been read, this ground of appeal fails.

It was contended by counsel for the appellant that his client was throughout the trial subject to such prejudice that he could not in the circumstances be said to have had a fair trial. Counsel for the appellant also submitted that the learned trial judge in his summing-up was so biased against the appellant that the appellant could not be said to have had a fair trial. Of the numerous examples of so-called bias which were brought to our attention it must be said that a good number were quite trivial. In one instance, however, it is clear that the learned trial judge was in error when he stated in his summing-up that both the appellant and the witness Henderson used an improvised washer during demonstrations in court. In fact it was Henderson who used the improvised washer while the appellant used a new "Healthway" washer in the course of another demonstration. In our view, this was a slip, of no great consequence, made in the course of a lengthy trial and is no indication of bias on the part of the learned trial judge.

It is true that the learned trial judge expressed himself with great emphasis and in strong terms on various matters. But the jury were left in no doubt that they were the sole judges of the facts in the case. This is what the learned trial judge said in his summing-up to the jury:—

"The facts of the case, on the other hand, are your responsibility. You are the sole judges of the facts in this case. If, during the course of this summing-up, I express or appear to express my own opinions on the facts, while you will of course consider them, if upon consideration you find yourselves unable to agree with them, then it is your bounden duty to disregard what I say. You and you alone are the ultimate judges of the facts. Your duty is to find what the facts are from the evidence which has been called and presented to you from the witness box. Then you apply to those facts the law as I have directed you."

It may be said that this direction was given at an early stage of the summing-up. However, the jury were reminded repeatedly throughout the summing-up that matters of fact were for them to decide. In our view, there is no real substance in these two grounds of appeal.

It was also contended that the learned trial judge erred in law in failing adequately to direct the jury on the danger of convicting an accused person upon circumstantial evidence. There are two passages in the summing-up which are relevant in this connection. The first passage, which comes after the direction in which the learned trial judge deals with what he refers to as the first question of the cumulative effect of circumstantial evidence, is as follows:—

"The second question to which I must draw your attention is that the question in this case, depending as it does on circumstantial evidence, is whether the cumulative effect of all the evidence leads you to the irresistible conclusion that it was the accused who committed this crime. Or is there some reasonably possible explanation such, for example — 'Was it an accident?'."

The second passage is as follows:—

"Now, as I told you earlier on, one of the points about circumstantial evidence is its cumulative effect. Any one of these points taken alone might, you may think, be capable of explanation. The question for you is: where does the totality of them, the total effect of them, all lead you to? Adding them together, considering them, not merely each one in itself, but altogether, does it or does it not lead you to the irresistible inference and conclusion that the accused committed this crime? Or is there some other reasonably possible explanation of those facts?

The prosecution case is that the effect of all this evidence drives you inevitably and inexorably to the one conclusion and one conclusion only: that it was the accused who intentionally caused the death of this young girl."

In our opinion, these directions are perfectly adequate in a case where the prosecution are relying on circumstantial evidence.

There are other grounds of appeal on which the appellant relied and which were discussed during the argument before this court. In our opinion there is no substance in any of them.

Although Jenny's body has never been found, there is overwhelming evidence on the record that the appellant murdered her. In our judgment no miscarriage of justice has occurred in this case.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Braddell Bros.*

GOODLAND LTD. v. LIM BAN TOON

[O.C.J. (Chua J.) May 10, 1966]

[Singapore — Suit No. 214 of 1965]

Landlord and Tenant — Whether three or more joint owners can grant a tenancy to one of them — Purchase of land by tenant jointly with others — Subsequent sale of land — Surrender of tenancy by operation of law.

In this case the facts shortly were that the defendant who was the tenant of a piece of land included in a larger lot joined with other tenants to purchase the lot as tenants in common. Subsequently the defendant and the other purchasers agreed to sell the land to a company, which was to develop the land. The consideration for the sale was the allotment of shares in the company and the land was stated to be sold subject to the existing tenancies. The company was later wound up and the land was sold and conveyed to the plaintiffs. The plaintiffs sought a declaration that the defendant's right to the land had been determined. The defendant claimed that he was a tenant of the land and that his tenancy had not been terminated.